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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,845	02/26/2002	Daniel Armstrong	ARM-1A	8192
20311	7590	11/10/2005	EXAMINER	
LUCAS & MERCANTI, LLP 475 PARK AVENUE SOUTH 15TH FLOOR NEW YORK, NY 10016			NOGUEROLA, ALEXANDER STEPHAN	
			ART UNIT	PAPER NUMBER
			1753	

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

12

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/083,845

Applicant(s)

ARMSTRONG, DANIEL

Examiner

ALEX NOGUEROLA

Art Unit

1753

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 27-29.
Claim(s) objected to: _____.
Claim(s) rejected: 1,3-6,8-13,15-17 and 22-26.
Claim(s) withdrawn from consideration: 18-21.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


Alex Noguera
Primary Examiner
Art Unit: 1753

Continuation of 3. NOTE: Applicant seeks to amend independent claims 1, 6, 10, and 15 to require isoelectric focussing one or microbes/cells and moving fluid by means of an electric field. New claim 30 would also require isoelectric focussing one or more microbes/cells and moving fluid by means of an electric field. As for isoelectric focussing, although this was a limitation present in the original claim set, it was not addressed with respect to the aforementioned independent claims and the claims that depend therefrom because capillary isoelectric focussing was in the alternative with capillary electrophoresis. See original claims 2, 7, 14, and 16. Applicant now argues the importance of isoelectric focussing. However in his first amendment, the amendment of May 10, 2005, Applicant amended independent claims 1, 6, 10, and 15 to require capillary electrophoresis and dropped isoelectric focussing as a limitation from these claims or claims that depend therefrom. Furthermore, although claim 26, which was added in the amendment of May 10, 2005 did require capillary isoelectric focussing Applicant now seeks, also with independent claims 1, 6, 10, and 15 the broader isoelectric focussing, that is, dropping "capillary" from capillary isoelectric focussing.

As for moving fluid by means of an electric field, there is no explicit recitation in the original disclosure, including the original claims, for such a limitation. While the Examiner will acknowledge that it is not unusual for an electrophoretic electrical field to also cause bulk fluid motion, known as electroosmosis, it does not always occur or occurs at a small enough rate to be noise, but not substantial. Moreover, since independent claims 1, 6, 10, and 15 do not any longer require a capillary, support for moving fluid can not be based on assuming electroosmosis (which the Examiner guesses is Applicants support since none is cited). For these reasons, the limitations of "isoelectric focussing" and "moving fluid by means of an electric field" raise new issues that would require further search or consideration. The limitation of "moving fluid by means of an electric field" raise the issue of new matter.

Applicant also appears on pages 17 -18 of the After Final amendment to have created new definitions for terms in the art. Isoelectric focusing focuses charged species by causing them to electrophoretically move along a pKa gradient until their isoelectric point is reached, at which point they stop moving. It is not based on varying voltage until an optimum focusing voltage is obtained. Also, Applicant states, "In contrast to the invention, Fuhr does not focus microbes using an electric field. Instead, Fuhr collects microbes along the capillary wall using electrodes 12a and 12b." Fuhr may not isoelectrically focus microbes, but one with ordinary skill in the art would view collecting microbes with electrodes as focussing microbes with an electric field.